REMARKS / ARGUMENTS

The present application includes pending claims 1-31, all of which have been rejected. Independent claims 1, 11, and 21 have been amended. The Applicant respectfully submits that the claims define patentable subject matter.

Claims 1-8, 10-12, 14-18, 20-22, 24-28, and 30-31 are rejected under 35 U.S.C. § 102(b) as being anticipated by USP 6272107 ("Rochberger"). Claims 3, 9, 13, 19, 23, and 29 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Rochberger in view of USP 6970919 ("Doi"). The Applicant respectfully traverses these rejections at least based on the following remarks.

CLAIM REJECTIONS UNDER 35 U.S.C. § 102

I. Rochberger Does Not Anticipate Claims 1-8, 10-12, 14-18, 20-22, 24-28, and 30-31

The Applicant first turns to the rejection of claims 1-8, 10-12, 14-18, 20-22, 24-28, and 30-31 under 35 U.S.C. 102(b) as being anticipated by Doi. With regard to the anticipation rejections under 102, MPEP 2131 states that "[a] claim is anticipated only if **each and every element** as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." See Manual of Patent Examining Procedure (MPEP) at 2131 (internal citation omitted). Furthermore, "[t]he identical invention must be shown in as complete detail as is

contained in the ... claim." See id. (internal citation omitted). Without conceding that Doi qualifies as prior art under 35 U.S.C. § 102(e), the Applicant traverses the rejection as follows.

A. Rejection of Independent Claims 1, 11, and 21

With regard to the rejection of independent claim 1 under 35 U.S.C. § 102(b), the Applicant submits that Rochberger does not disclose or suggest at least the limitation of "establishing a second communication path that is independent of a first communication path that couples at least two end points via at least a first broadband network, wherein each network connection on said first communication path between said at least two end points, has a corresponding redundant network connection on said second communication path, and wherein said first and second communication paths are of different communication types," as recited by the Applicant in independent claim 1.

The Office Action states the following:

> Regarding claim 1, Rochberger teaches a method comprising: establishing a second communication path (figures 1 or 2 or 3 or 10 or 11 or 12 or 15 or 16, path going through elements 24 and 26) that is independent of a first communication path (figures 1 or 2 or 3 or 10 or 11 or 12 or 15 or 16, path going through elements 16 and 18) that couples at least two end points via at least a first broadband (i.e. ATM) network (column 10, lines 14-20, the principle of the method of the first embodiment is that **two call paths are set up between the source and destination nodes: a primary call path and a redundant, i.e., secondary, call path.** The two call paths are, however, associated with each other in the switching

> tables of the two end nodes, i.e., the source and destination nodes), wherein ***each*** **network connection on first communication path** (figures 1 or 2 or 3 or 10 or 11 or 12 or 15 or 16, path going through elements 16 and 18) **between at least two end points** (column 10 line 20, two end nodes, i.e., the source and destination nodes), **has a corresponding redundant network connection** (figures 1 or 2 or 3 or 10 or 11 or 12 or 15 or 16, path going through elements 24 and 26) **on second communication path, and wherein first and second communication paths are of different types (column 10 lines 14-20, different types are satisfied by one path being primary and the other being redundant**); and transferring information that would be normally transferred over first communication path between at least two endpoints via established second communication path over corresponding redundant network connection (column 12 lines 10-15, at this point, data flows from the source user to the destination user over the redundant path (which is now the active path). Both the source and destination users are unaware that a break occurred in the active path aside from a short interruption in the flow of data cells).

See the Office Action at pages 1-2 (emphasis added). The Applicant respectfully disagrees, especially with the above bolded portions of the argument. Applicant's claim 1 recites, in relevant portion, the following: "each network connection on said first communication path … has a corresponding redundant network connection on said second communication path" (also bolded in the above argument). The important feature here is that **each of the network connections between the end points has the redundancy connection**. Clearly, this is not disclosed in Rochberger.

For example, referring to figures 1 or 2 or 3 or 10 or 11 or 12 or 15 or 16 of Rochberger, the Applicant points out that none of the transit nodes 1-4 have

redundancy network connections. Even though Rochberger discloses separate paths between the source node and the destination node, each of the paths passes through separate network nodes (nodes 1-2 and 3-4) and none of these nodes use redundancy connections.

Furthermore, Rochberger discloses an Asynchronous Transfer Mode (ATM) network where each network connection (i.e., both the active and the redundant path) is an ATM-based type connection. For example, Rochberger discloses (col. 6, ll. 46-62) that when a switched virtual circuit (SWC) call is established via the active path, the same SWC-type call is established via the redundant path. In this regard, Rochberger's active and redundant paths are obviously of the same communication type.

In the above argument, the Examiner is attempting to distinguish the two communication paths between the source and destination nodes simply based on the fact that they are called different names, i.e., one path being "primary" and the other path being "redundant." The Applicant respectfully disagrees with the argument as these are just semantic differences used by Rochberger to designate two paths that are of the same communication type. Nevertheless, to further clarify this point and advance prosecution, the Applicant has amended claim 1 (as set forth above) to emphasize that the two network connections are of different communication types.

Therefore, the Applicant maintains that Rochberger does not disclose or suggest at least the limitation of "establishing a second communication path that is independent of a first communication path that couples at least two end points via at least a first broadband network, wherein each network connection on said first communication path between said at least two end points, has a corresponding redundant network connection on said second communication path, and wherein said first and second communication paths are of different communication types," as recited by the Applicant in independent claim 1.

Accordingly, independent claim 1 is not anticipated by Rochberger and is allowable. Independent claims 11 and 21 are similar in many respects to the method disclosed in independent claim 1. Therefore, the Applicant submits that independent claims 11 and 21 are also allowable over the references cited in the Office Action at least for the reasons stated above with regard to claim 1.

B. Rejection of Dependent Claims 2-8, 10, 12, 14-18, 20, 22, 24-28, and 30-31

Based on at least the foregoing, the Applicant believes the rejection of independent claims 1, 11, and 21 under 35 U.S.C. § 102(b) as being anticipated by Rochberger has been overcome and requests that the rejection be withdrawn. Additionally, claims 2-8, 10, 12, 14-18, 20, 22, 24-28, and 30-31 depend from

independent claims 1, 11, and 21, respectively, and are, consequently, also respectfully submitted to be allowable.

The Applicant also reserves the right to argue additional reasons beyond those set forth above to support the allowability of claims 2-8, 10, 12, 14-18, 20, 22, 24-28, and 30-31.

II. Rejection of Dependent Claims 3, 9, 13, 19, 23, and 29

Based on at least the foregoing, the Applicant believes the rejection of independent claims 1, 11, and 21 under 35 U.S.C. § 102(b) as being anticipated by Rochberger has been overcome and request that the rejection be withdrawn. Additionally, since the additional cited reference (Doi) does not overcome the deficiencies of Rochberger, claims 3, 9, 13, 19, 23, and 29 depend from independent claims 1, 1, and 21, respectively, and are, consequently, also respectfully submitted to be allowable.

The Applicant also reserves the right to argue additional reasons beyond those set forth above to support the allowability of claims 3, 9, 13, 19, 23, and 29.

CONCLUSION

Based on at least the foregoing, the Applicant believes that all claims 1-31 are in condition for allowance. If the Examiner disagrees, the Applicant respectfully requests a telephone interview, and requests that the Examiner telephone the undersigned Attorney at (312) 775-8176.

The Commissioner is hereby authorized to charge any additional fees or credit any overpayment to the deposit account of McAndrews, Held & Malloy, Ltd., Account No. 13-0017.

A Notice of Allowability is courteously solicited.

Respectfully submitted,

Date: 28-APR-2009

/Ognyan I. Beremski/

Ognyan Beremski, Esq.
Registration No. 51,458
Attorney for Applicant

McANDREWS, HELD & MALLOY, LTD.
500 WEST MADISON STREET, 34TH FLOOR
CHICAGO, ILLINOIS 60661
(312) 775-8000

/ OIB